Maryland
DEPARTMENT OF HEALTH

*Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Acting Secretary*

The Maryland Department of Health – Developmental Disabilities Administration
Fiscal Year 2022 Operating Budget
Response to the Department of Legislative Service Analysis

Appropriations Committee
Health and Human Services Subcommittee
Delegate Kirill Reznik, Chair

Budget and Taxation Committee
Health and Human Services
Senator Melony Griffith, Chair
March 5, 2021

The Department thanks the Governor, the Department of Budget and Management, and the Budget Committees for their support in 2020 and in 2021 with COVID-19 response efforts. We thank the Department of Legislative Services for its insightful budget analysis.

Performance Analysis: Managing for Results

*Resident-on-Resident Assaults at State Facilities Remain Elevated*

**The fiscal 2022 Managing for Results (MFR) submission for MDH Administration included a new staff safety performance measure at State psychiatric hospitals, measured as the incidence rate of patient to staff assaults per 1,000 patient days. The Department of Legislative Services (DLS) recommends adopting narrative that requests DDA to provide the same measure in its fiscal 2023 MFR submission and that DDA begin reporting resident-on-resident and resident-on-staff assault data separately for the Holly Center, the Potomac Center, and the SETT unit. (p. 7)**

The Department concurs with this recommendation.

*DDA Anticipates Delays in Case Managers Processing Person-Centered Plans*

**DDA has published policy memos and webinars that discuss a streamlined person-centered plan development and authorization process that includes increasing efficiencies in submitting, reviewing, and approving plans. DDA should briefly explain why there were delays at the case management level under the former process and how the new process will specifically assist CCS in meeting the new processing goal. Additionally, DDA should provide an update on current backlogs in approving person-centered plans. (p. 10)**

The DDA has established several tools and undertaken several actions to improve the management of the person-centered plans (PCP) process.

- Worked with providers through webinars on the development of PCPs for Coordinators of Community Services (CCS) and service providers;
- Worked with providers to improve scheduling and obtaining the necessary paperwork from all parties during the COVID-19 public health emergency;
- Worked with providers to increase referral acceptance and resolve LTSS*Maryland* functionality issues;
- Established internal tracking to monitor the progress of the review and approval process by DDA, including weekly and monthly reports on PCP development and submission compliance;
- DDA staff are provided a list of PCP's that are due in the next 90 days divided by months; and,
- CCS agencies and DDA staff meet weekly to review a list of PCP's that are due in the next 7 days.

Regional leadership teams and the DDA management team are continuing to review the PCP process to identify ways to further streamline the process from start to finish.

<u>Issues</u>

1. *New Community Services Rate Structure and Transition to LTSS -- Electronic Visit Verification Requirements for Personal Supports*

**DDA should provide an estimate of the budgetary impact of not meeting the EVV requirement systemwide. Additionally, DDA should provide a timeline for when individuals in self-directed services will be compliant with the EVV requirement. (p. 32)**

Based on the advice of the Department's legal counsel, the U.S. Centers for Medicare and Medicaid Services can base the amount of the penalty solely on the participants not using the EVV system instead of all participants receiving in-home personal care services. Therefore, DDA estimates the annual penalty could be as low as $157,500 or $39,375 quarterly based on individuals in self-directed services. We caution that this estimate is entirely subject to federal action, and that DDA has not been informed of federal action yet.

We estimate that a new request for procurement (RFP) should be issued by the Department in the near future and that a new financial management service (FMS) procurement should be in place by early 2022.

2. *New Community Services Rate Structure and Transition to LTSS -- Implementation Plan and LTSS Pilot Expansion*

**DDA should provide a long-term timeline and plan for how it will meet the provisions outlined in Chapter 7 and how it will transition all individuals and providers in the Community Services program to the LTSS system and FFS reimbursement model. (p. 34)**

DDA is still evaluating the impact on the transition to LTSS, as there has been ongoing progress since the passage of the legislation last session, and ongoing legislative action (SB 796 (2020), Chapter 7 of 2021) this year. For example, SB 796 (2020) included 4 provisions relative to the implementation of EVV prior to December 31, 2020. However, as noted in the analysis, the transition was completed by December 31, 2020.

The legislation also includes a requirement that provider enrollment in the Medicaid ePrep system is complete prior to LTSS implementation. All providers are enrolled in the ePrep system, however, changes continue to be made when a provider adds or deletes a service, changes location of the main office, and adds or removes a residential site.

Another benchmark included in the legislation is complete and accurate Person-Centered Plans. The success of the LTSS implementation is tied to the plans as they include the authorization of services. The development of Person-Centered Plans started in 2018 when case management agencies and the DDA regional offices began using LTSS for plan development, and intake and eligibility. However, Detailed Service Authorization, which is a component of the plans, began in July 2020 and continues today as teams meet to review and update plans as they become due. CMS requires that plans are done at least once a year.

Other provisions of the legislation require further review to determine their impact on the implementation of LTSS*Maryland*.

Operating Budget Recommended Actions

The Maryland Department of Health concurs with two (2) of the four (4) operating budget recommendations proposed by the Department of Legislative Services.

1. **Add budget language restricting general funds for the purpose of administration until the Developmental Disabilities Administration submits a report on data collection and spending forecasts following its transition to a new rate structure.**

The Department concurs with this recommendation but respectfully requests a December 2021 due date for this report in order to prepare the requested information.

2. **Adopt committee narrative recommending that the Developmental Disabilities Administration add a staff safety performance measure for its facilities and report assault data by facility.**

The Department concurs with the recommendation but respectfully requests a December 2021 due date for this report in order to prepare the requested information.

3. **Add language restricting funding for the Community Services program to that purpose.**

The Department respectfully disagrees with the recommendation. Legislative restriction language hampers agencies' ability to realign budget savings from some programs for budget deficits in others during the fiscal year. For the Maryland Department of Health, this flexibility has allowed the Department to close its books in balance in recent years without incurring close-out audit findings from the Office of Legislative Audit for unexpected cost overruns in employee overtime, spikes in entitlement programs' service utilization, and the unexpected loss of federal funds.

Over the last four years, the frequency of legislative restriction language on the Department's budget has grown from two instances, the Medicaid Provider Reimbursement and Medicaid Behavioral Health budgets, to a proposed six budgets in FY 2022: Behavioral Health Community Services for the Uninsured, Behavioral Health Community Services for Medicaid Recipients, Maryland Children's Health Program, and now DDA Community Services.

The Department does not deliberately underspend the DDA Community Services budget. Rather, prudent fiscal management and other several factors lead to savings that, as the DLS analysis notes, is on average only roughly 2% of the Community Services budget each year. Reconciliation of the mandated prospective payment system occurs well into the following fiscal year—as much as 10 months after the end of the previous fiscal year. For example, the accrual established for FY 2019 was depleted by end of FY 2020. It's early March and DDA is still receiving adjustments from providers for FY 2020.

As noted in the analysis, improved collection of federal matching funds reduces the expenditure of general funds. However, there is a two to three month lag in the realization of federal revenue, so the exact amount is not known until after the fiscal year ends.

Another critical factor is the number of people who start services and the timing of when they start services during the fiscal year. DDA uses an average of six months of service utilization for new placements but if a higher number of people start services later in the year, then there will be savings.

**4. Reduce general funds by $37.8 million based on unanticipated enhanced federal matching funds continuing through the COVID-19 public health emergency.**

The Department respectfully disagrees with the recommendation for various reasons:

1. First, any enhanced FMAP collected in FY 2022 will be used to offset Appendix K expenditures similar to the way FY 2020 was closed and the way DDA also expects to close out FY 2022.

2. Second, the reconciliation of the prospective payment system occurs after the fiscal year closes. DDA's revenue collection is based upon earned income that is realized after the end of the fiscal year. Providers are allowed to make adjustments throughout the fiscal year that can result in savings or additional expenditures. Therefore, it is difficult to have an accurate estimate of expenditures and revenue during the year. When calculating the year-end fund split between general funds and federal funds, DDA relies on ten months of collection and an estimate of the remaining two months.

3. Third, DDA uses general funds to pay providers and later receives the revenue via the federal claims process. Federal fund attainment is based upon expenditure

reimbursement. Until DDA transitions to a fee-for-service payment model, this could present a practical challenge for the agency when trying to process a prospective quarterly payment if general funds are exhausted because of this proposed action.

Budget Reconciliation and Financing Act Recommended Actions

The Department does not concur with the single Budget Reconciliation and Financing Act recommendation proposed by the Department of Legislative Services.

1. **Authorize a planned reversion of $16.8 million in general funds from the Community Services program to reflect general fund savings from enhanced federal matching funds that were not claimed in fiscal 2020.**

The Department respectfully disagrees with the recommendation. The analysis assumes that revenue from the enhanced FMAP was not counted in FY 2020 at closeout and is therefore available in FY 2021. However, DDA included the enhanced match at closeout. In FY 2020 DDA collected an additional $23.7 million in enhanced FMAP which was used to offset $21.9 million in Appendix K expenditures. The enhanced FMAP was essential to enabling DDA to successfully close in FY 2020. In addition, as indicated in the previous response, DDA's actual year-end federal attainment estimate is based upon 10 months of collections and a two-month estimate for the remainder of the year, which is used to calculate year-end win/loss and fund splits. To formulate a reasonable estimate of year-end FMAP DDA analyzes both the expenditures as well as the claims to project federal funds attainment.